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No. : 07-1144

FILED
APR 17 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In the

Supreme Court of the United States

RUBIN STERNGASS,

Petitioner,

-against-

TOWN OF WOODBURY, SHEILA H. CONROY, et. al.

Respondents.

REPLY PETITION TO RESPONDENTS' BRIEF IN OPPOSITION

RUBIN STERNGASS
Petitioner Pro Se
129 Ridge Road
Valley Cottage, New York 10989
(845) 721-0421

DICK BAILEY SERVICE (212) 608-7666 (718) 522-4363 (516) 222-2470 (914) 682-0848 Fax (718) 522-4024
1-800-531-2028

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Letter from the Supreme Court of United States, Clerk of the Court, William K. Sutter, dated March 11, 2008 ..... 1a

Mailing Receipt dated March 14, 2008 ..... 2a

Affidavit in Opposition to Motion for Summary Judgment dated May 5, 2006 ..... 3a

In the spirit of brevity, I am making my reply to the Town of Woodbury's Brief by supplying my Affidavit in Opposition to Motion for Summary Judgment to the United States District Court in this entitled matter, dated May 5, 2006, as that was incorporated into my Petition for Rehearing under New York State Court of Appeals Docket No. 06-3612 (CV).

In addition thereto, the Town of Woodbury's position is erroneous as it refers to being "un-ripe". Efforts to the Zoning Board of Appeals is fruitless when contesting an unconstitutional retroactive amendment, as that constitutional question exceeds their statutory authority.

This same position relates to the new Village of Woodbury. The Village has not served me with their Brief. I refer to the attached letter of this Honorable Court, dated March 11, 2008, and the copy of the mailing receipt that has put them on notice.

Pursuant to the "indispensable party" concept and *Village* of *Island Park v. Island Park - Long Beach Associates,* 81 NYS23 407; 283 NYS 20 548, zoning relates to **LAND** and once improved, in compliance with a valid Zoning Ordinance, is to be protected by the Supremacy Clause and should not be **DIVESTED** by subsequent, invalid (as applied) amendment, as that becomes a constitutional issue and is reserved to the Courts – both State and Federal – as they are concurrent jurisdictions.

Both direct and consequential damage for a constitutional violation are a legal remedy. *Teamsters v. Terry,* 494 US 558, 570-577 can only be found in Courts of Law; *Williamson, 473 US @ 194-195.* The State of New York failed to pay and to provide an adequate post-deprivation remedy for the property loss (1953 Amendments) *[Hudson v. Palmer* (as cited in original Brief) and *Monteray v. DelMonte* (1999), 526 US 687; 119 S. Ct. 1624].

In further support hereof, I cite *Mr. Justice Holmes – Pennsylvania Coal Co. v. Mahon.* 260 US 393 @ 416; 43 S. T. 158, 160, which states:

> "We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change."

Inverse condemnation is a tortuous act and an uncompensated taking; and it is constitutionally void [*Gardner v. Village of Newburg;* 2 Johns Ch. 162, 164, 166 (New York 1816)]. Just compensation is mandated; and tortuous interference with improved property interests is a Common Law remedy. And relates to trespass on the case, with daily violative actions.

Your prompt reply to this urgent matter will be greatly appreciated.

Thank you.

Sincerely,

Rubin Sterngass
Pro Se Petitioner
129 Ridge Road
Valley Cottage, NY 10989
Home: (845) 268-2558
Cell: (845) 721-0421
FAX: (845) 268-2176
rubin@all-vac-o-matic.com

Enclosures

Copy to:

Case Analyst Sandy Spagnolo
State Court of the United States
Office of the Clerk
One First Street Northeast
Washington, DC 20543-0001

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

March 11, 2008

Mr. Rubin Sterngass
129 Ridge Road
Valley Cottage, NY 10989-2466

Re: Rubin Sterngass v.
Town of Woodbury, New York, et. al.,
No. 07-1144

Dear Mr. Sterngass:

The petition for a writ of certiorari in the above entitled case was filed on January 30, 2008 and placed on the docket March 11, 2008 as No. 07-1144.

Forms are enclosed for notifying opposing counsel that the case was docketed.

Sincerely,
William K. Suter, Clerk

Enclosures

[redacted], New York
109999998
359C960123-0098
03/14/2008 (800)275-8777 04:38:31 PM

Sales Receipt

Product Description	Sale Qty	Unit Price	Final Price
NEWBURGH NY 12550			$4.60
Zone-2 Priority Mail			
Flat Rate Env			
1.00 oz.			
Delivery Confirmation			$0.65
Label #:	0307175C0002493329S4		
Issue PVI:			$5.25
CENTRAL VALLEY NY 10917			$4.60
10917 Zone-1			
Priority Mail			
1.30 oz.			
Delivery Confirmation			$0.65
Label #:	0308007000010039415O		
Issue PVI:			$5.25
Total:			$10.50

Paid by:
Visa $10.50
Account #: XXXXXXXXXXXX3126
Approval #: 014048
Transaction #: 747
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RUBIN STERNGASS,

Plaintiff,

-against-

TOWN OF WOODBURY and its Supervisor SHEILAH CONROY,

Defendants.

DOCKET NO.
5 CIV. 8786 (CM)

AFFIDAVIT IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Rubin Sterngass, Plaintiff, pro se, being duly sworn, deposes and says:

1. I am the Plaintiff in this case, and I submit this affidavit in opposition to the Motion or Summary Judgment, and in accordance with the Court's decision dated March 13, 2006.

2. On April 24, 2006, I wrote this Court seeking an adjournment of my time to respond to the motion for summary judgment. As the Court has never responded, I am submitting these papers without the benefit of counsel. I respectfully request that the motion be adjourned to allow me the opportunity to retain counsel and submit papers with the benefit of counsel.

Point I

3. The denial to permit the rebuilding of the site, once vested, as established by confirmation of the Zoning Board of Appeals decision/order in 1964, became a regulatory taking, as it was based upon an invalid amendment dated 1953 and subsequently to 1990 in current format.

4. The Town's papers simply miss the point by focusing on an application for a zoning change. If I were seeking a zoning change, the Town's argument would be correct. However, it is my position that I had vested rights in the property which were taken without due process by the Town's actions.

Point II

5. The mandate, as written in the 1928 zoning ordinance, requires the Town Supervisor to enforce same, and her refusal and non-compliance caused constitutional violation of due process.

Point III

6. Once vested as a permitted multi-residential use and after the property is actually improved, a constitutionally protected property right is created. Subsequent legislative fiat cannot impair the vested right as it would violate the contract clause and my civil rights.

Point IV

7. I will attest that I was present during a Planning Board Public Hearing in 1979, and I observed a display of anti-semetic "lynch mob" mentality, in the presence of my now-deceased

attorney of record. The mentality was initially displayed by the regulatory act against the site's use and restricted its us to "warmer moths" only, in direct violation of the 1928 Zoning Ordinance enabling authority.

Point V

8. The current, comprehensive amendment shall not validly be applied retroactively.

9. With respect to the Town's papers, the Town Planner's Affidavit, while impressive, does not state the law pursuant to the fifth (5th) and fourteen (14th) constitutional constraints and its retroactivity.

10. In addition, abandonment cannot be created by subsequent legislative fiat, contrary to established law of "intent" and "overt act".

11. With these papers, I am providing legal research that I have culled, as well as other documents which I believe may be helpful to the Court.

S/
Robin Stellingwerf

Robin Stellingwerf

Sworn to before me this
5 Day of May, 2006

S/
Notary Public